

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

KOHLER CO.)	
)	
Plaintiff,)	
)	
vs.)	
)	Case No.
ELKAY MANUFACTURING COMPANY)	
)	
Defendant.)	
)	
)	

COMPLAINT

Kohler Co. (“Kohler”), by and for its Complaint against Defendant Elkay Manufacturing Company (“Elkay”), alleges to the Court as follows:

PARTIES

1. Kohler is a company organized and existing under the laws of the State of Wisconsin, with a principal place of business located at 444 Highland Drive, Kohler, Wisconsin, 53044.

2. Kohler is informed and believes that Elkay is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business located at 2222 Camden Court, Oak Brook, Illinois, 60523.

JURISDICTION

3. This is an action for patent infringement arising out of Elkay’s unauthorized manufacturing, offering for sale, and selling kitchen sinks in violation of Kohler’s patent rights. Because this is an action for infringement under the patent laws of the United States, 35 U.S.C.

§ 271, et seq., this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

4. This Court has personal jurisdiction over Elkay in that, at all times pertinent hereto, upon information and belief, Elkay is doing business and has systematic activities in this judicial district and is committing infringing acts in Wisconsin and this District. More specifically, upon information and belief, Elkay offers for sale and sells apron-front sinks, including the accused infringing sinks, online and through dealers and retail outlets in this Judicial District.

VENUE

5. Venue is proper in the Eastern District of Wisconsin pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(b) because Elkay is subject to personal jurisdiction in this District, due at least to Elkay's substantial business in Wisconsin and this District.

BACKGROUND

KOHLER HAS A HISTORY OF INNOVATION

6. Kohler, founded in 1873, is a family-owned business. It is one of America's oldest and largest privately held companies, and it first began by manufacturing and selling plows and farm implements in Sheboygan, Wisconsin.

7. In 1883, Kohler took the company beyond its farming roots and created a new business line by coating an iron hog scalding water trough with enamel and calling it a "bathtub." This bathtub innovation was an immediate hit and marked the first of many plumbing products manufactured by Kohler.

8. Today, in that same spirit of innovation and invention, Kohler has grown worldwide to be synonymous with quality and originality.

**KOHLER IS A MARKET LEADER
FOR THE KITCHEN AND BATH INDUSTRY**

9. Kohler is likely best known for its distinctive and often iconic kitchen and bath products. Kohler markets across six continents a highly regarded array of sinks, faucets, and other kitchen and bath accessories. Kohler's diversity of products and powerful portfolio of brands continually set new standards in design, craftsmanship, and innovation.

10. Kohler is a recognized leader in kitchen and bath design, and its products are well-known around the world by its global customer base in part because of Kohler's extensive advertising and promotional efforts, which total millions of dollars each year.

11. Kohler markets across many channels including, among others, the Internet, television, magazines, and newspapers.

12. Always an innovator, Kohler continuously invests in the engineering, design, and development of new kitchen and bath products, positioning itself as an industry and market leader.

13. Kohler currently owns thousands of patents worldwide on innovations in the kitchen and bath industry.

THE PATENTS-IN-SUIT

14. Kohler is the assignee and owner of United States Patent No. 9,173,487 ("the '487 patent") which describes and discloses an original and unique apron-front sink. The '487 patent, entitled "Apron-front Sink," was duly and legally issued by the United States Patent and Trademark Office on November 3, 2015, from Application Serial No. 13/310,460, filed on December 2, 2011. The '487 patent claims priority to U.S. Provisional Application No. 61/449,585, which was filed on March 4, 2011. A true and correct copy of the '487 patent is attached hereto as Exhibit A.

15. Kohler is the assignee and owner of United States Design Patent No. D663,389 (“the ’389 patent”) which covers an original and unique sink design. The ’389 patent, entitled “Sink,” was duly and legally issued by the United States Patent and Trademark Office on July 10, 2012, from Application Serial No. 29/412,242, filed on February 1, 2012, which is a Division of Application Serial No. 29/386,884, filed on March 4, 2011. A true and correct copy of the ’389 patent is attached hereto as Exhibit B.

16. Kohler is the assignee and owner of United States Design Patent No. D675,300 (“the ’300 patent”) which covers an original and unique sink design. The ’300 patent, entitled “Sink,” was duly and legally issued by the United States Patent and Trademark Office on January 29, 2013, from Application Serial No. 29/428,614, filed on August 1, 2012, which is a Division tracing priority back to Application Serial No. 29/386,884, filed on March 4, 2011. A true and correct copy of the ’300 patent is attached hereto as Exhibit C.

17. Kohler is the assignee and owner of United States Design Patent No. D670,367 (“the ’367 patent”) which covers an original and unique sink design. The ’367 patent, entitled “Sink,” was duly and legally issued by the United States Patent and Trademark Office on November 6, 2012, from Application Serial No. 29/425,479, filed on June 22, 2012, which is a Division tracing priority back to Application Serial No. 29/386,884, filed on March 4, 2011. A true and correct copy of the ’367 patent is attached hereto as Exhibit D.

18. The ’389, ’300, and ’367 patents are collectively referred to herein as the “Design Patents-in-Suit.”

**KOHLER’S NOVEL AND DISTINCTIVE SINK DESIGNS
ARE PROTECTED BY THE ’487 PATENT AND THE DESIGN PATENTS-IN-SUIT**

19. On or around July 2011, after significant engineering and development expense, Kohler introduced sinks practicing the inventions claimed in the ’487 patent and having the

novel and distinctive designs embodied in the Design Patents-in-Suit. At least Kohler's Vault™, Strive™, and Whitehaven® lines of apron-front sinks are embodiments of the '487 patent and the Design Patents-in-Suit.

20. Kohler has extensively promoted its category of apron-front sinks, and these sinks have been featured and highlighted both in design and lifestyle magazines as well as in numerous other media outlets.

21. As a result of their unique and distinctive designs, the Vault™, Strive™, and Whitehaven® lines of apron-front sinks have become successful commercial products for Kohler.

ELKAY'S INFRINGING ACTS

22. Kohler owns the exclusive right, title, and interest in and to the inventions claimed in the '487 patent.

23. Kohler owns the exclusive right, title, and interest in and to the designs covered by the Design Patents-in-Suit.

24. Notwithstanding Kohler's rights, Elkay, without permission or authorization, is manufacturing, offering for sale, and selling certain sinks, including the Crosstown™ Stainless Steel Double Bowl Apron Front Undermount Sink, Crosstown™ Stainless Steel Single Bowl Apron Front Undermount Sink, and sinks marketed under EAQDUHF3523L, EAQDUHF3523R, ECTRUF30179R, ECTRUF30179RDBG, ECTRUF32179R, ECTRUF32179RDBG, ELUHF2520, ELUHF2520DBG, ELUHF3320, ELUHF332010, ELUHF332010DBG, ELUHF3320DBG, ELUHFS2816, ELUHFS2816DBG, ECTRAF3220RGB, ECTRUFA32179, and EXTRUFA32179DBG model numbers (and any other similarly configured products (collectively, the "Infringing Apron-Front Sinks")), which

infringe at least one claim of the '487 patent and the Design Patents-in-Suit. A true and correct copy of a representative Infringing Apron-Front Sink's specification is attached hereto as Exhibit E.

COUNT I

INFRINGEMENT OF U.S. PATENT NO. 9,173,487

25. Kohler repeats and realleges each and every allegation contained in paragraphs 1-24, inclusive, as though fully set forth herein.

26. The '487 patent is valid and enforceable.

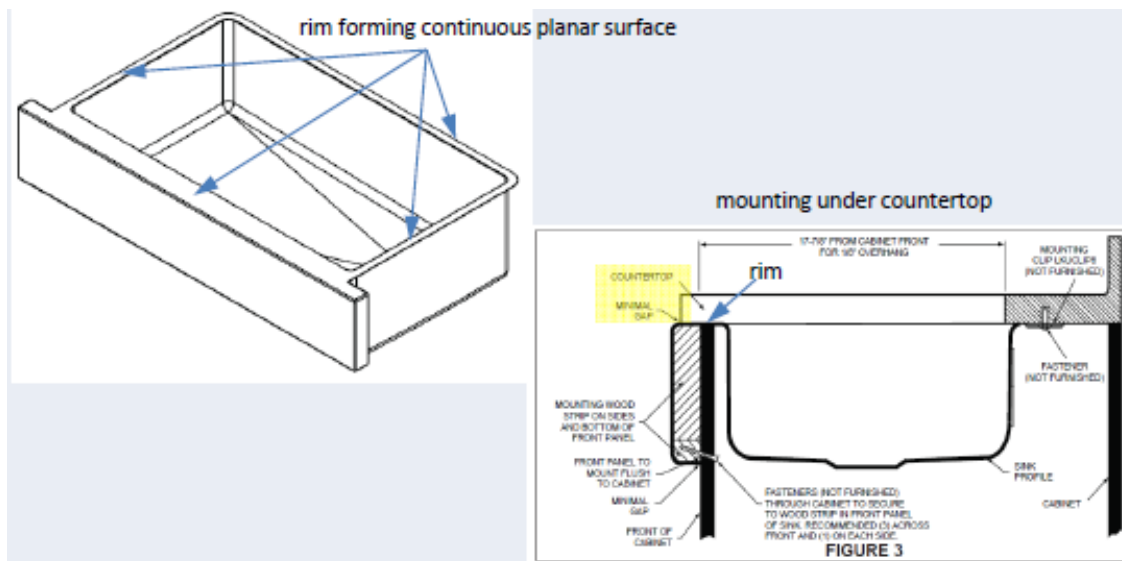
27. Kohler is the owner of all right, title, and interest in and to the inventions claimed in the '487 patent. Kohler is entitled to receive all damages and the benefits of all other remedies for Elkay's infringement.

28. Without permission or authorization from Kohler and in violation of 35 U.S.C. § 271(a), Elkay is making, selling, offering for sale, and/or using in this District and elsewhere in the United States, certain apron-front sinks, including, but not limited to, the Infringing Apron-Front Sinks that infringe at least claims 1, 12, and 18 of the '487 patent (the "Asserted Claims").

29. More specifically, in violation of the Asserted Claims, the Infringing Apron-Front Sinks are mounted to the underside of a horizontal countertop. *See* Annotated Illustration No. 1 below.

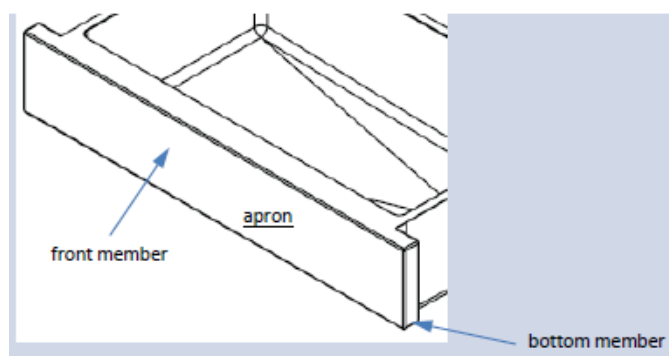
30. The Infringing Apron-Front Sinks have a rim that forms a continuous surface. *See* Annotated Illustration No. 1 below.

31. The rim of the Infringing Apron-Front Sinks is configured to be mounted adjacent an underside of a horizontal countertop. *See* Annotated Illustration No. 1 below.



Annotated Illustration No. 1. (Ex. F, Installation Instructions Undermount Apron Front Sinks.)

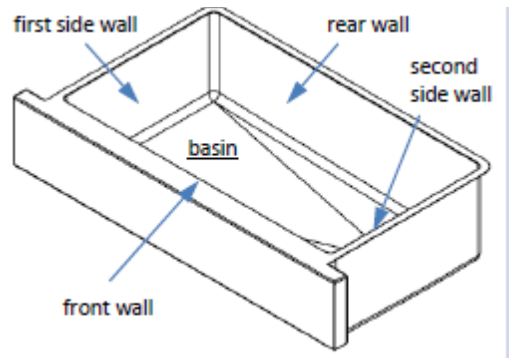
32. The Infringing Apron-Front Sinks have an apron-front. See Annotated Illustration No. 2 below.



Annotated Illustration No. 2. (Ex. F, Installation Instructions Undermount Apron Front Sinks.)

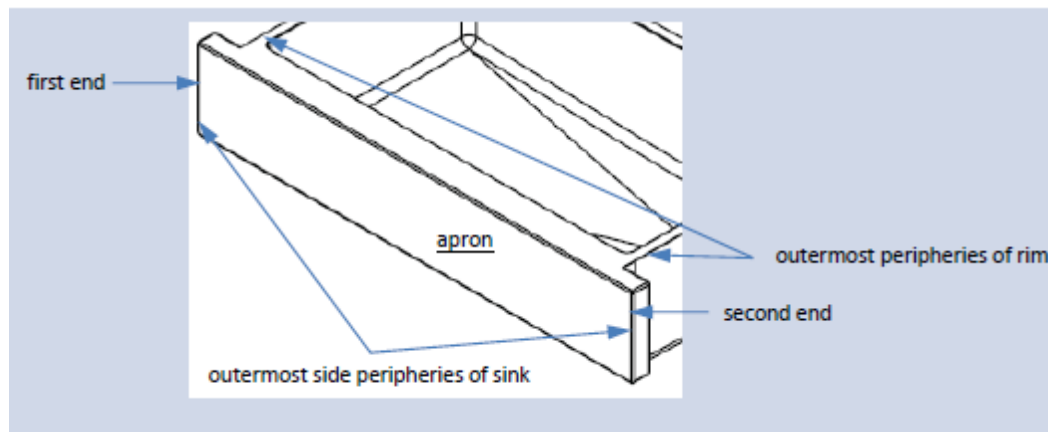
33. The Infringing Apron-Front Sinks have one or more basins. See Annotated Illustration No. 3 below.

34. The basins in the Infringing Apron-front Sinks have a front wall, rear wall, first side wall and second side wall. See Annotated Illustration No. 3 below.



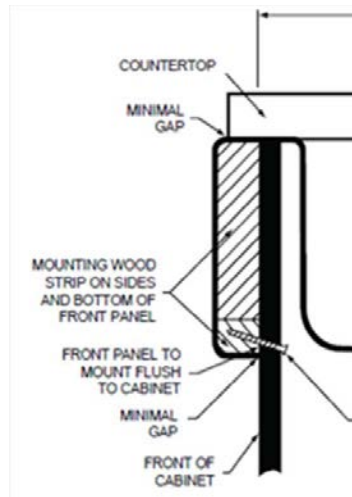
Annotated Illustration No. 3. (Ex. F, Installation Instructions Undermount Apron Front Sinks.)

35. The Infringing Apron-Front Sinks have an apron-front that extends outwardly past the outermost periphery of the rim. *See* Annotated Illustration No. 4 below.



Annotated Illustration No. 4. (Ex. F, Installation Instructions Undermount Apron Front Sinks.)

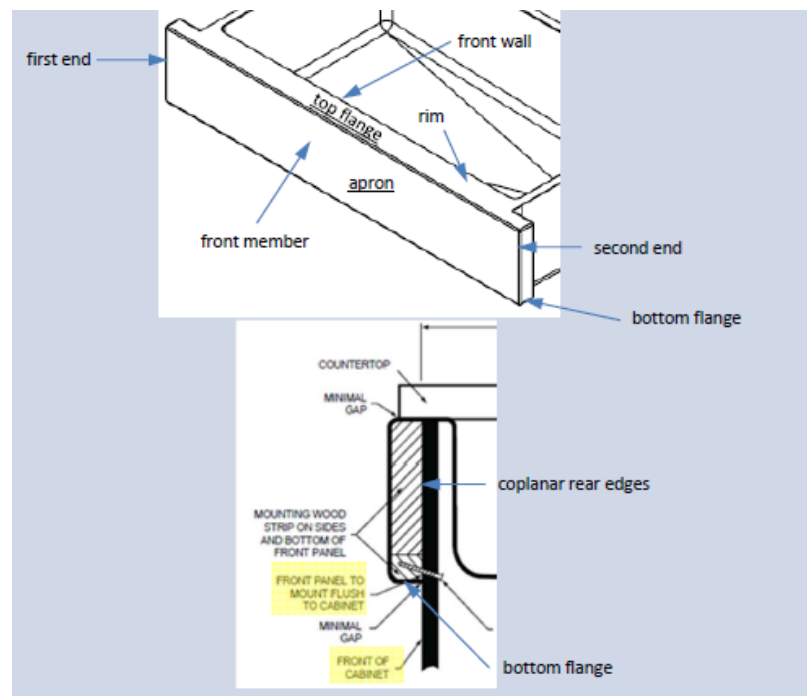
36. The bottom member of the apron-front of the Infringing Apron-Front Sinks has a rear edge that is configured to engage a vertical surface of a cabinet. *See* Annotated Illustration No. 5 below.



Annotated Illustration No. 5. (Ex. F, Installation Instructions Undermount Apron Front Sinks.)

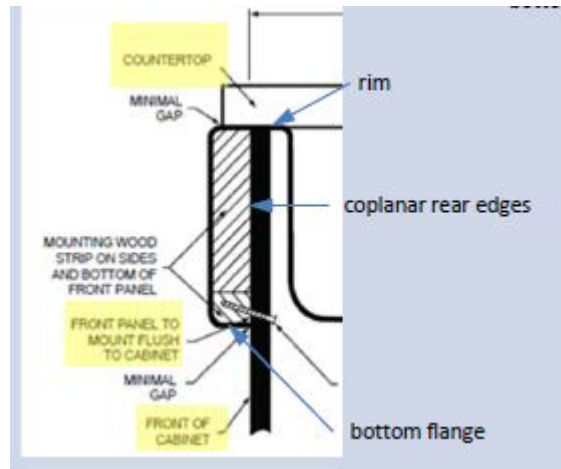
37. The Infringing Apron-Front Sinks have a top flange. *See* Annotated Illustration No. 6 below.

38. The Infringing Apron-Front Sinks have a bottom flange. *See* Annotated Illustration No. 6 below.



Annotated Illustration No. 6. (Ex. F, Installation Instructions Undermount Apron Front Sinks.)

39. The rim of the Infringing Apron-Front sinks is supported by the cabinet. *See* Annotated Illustration No. 7 below.



Annotated Illustration No. 7. (Ex. F, Installation Instructions Undermount Apron Front Sinks.)

40. Elkay's infringement of the '487 patent has been and continues to be willful and deliberate.

41. Elkay's conduct has caused and will continue to cause Kohler substantial damage, including irreparable harm, for which Kohler has no adequate remedy at law, unless and until Elkay is enjoined from infringing the '487 patent.

COUNT II

INFRINGEMENT OF U.S. DESIGN PATENT NO. D633,389

42. Kohler repeats and realleges each and every allegation contained in paragraphs 1-41, inclusive, as though fully set forth herein.

43. The '389 patent is valid and enforceable.

44. Kohler is the owner of all right, title, and interest in and to the design covered by the '389 patent, and Kohler is entitled to receive all damages and the benefits of all other remedies for Elkay's infringement.

45. Without permission or authorization from Kohler, Elkay has manufactured,

offered for sale, and sold and continues to manufacture, offer for sale, and sell including, without limitation, the Infringing Apron-Front Sinks which infringe the '389 patent.

46. The following is a graphic from the Elkay Specification for the Crosstown Stainless Steel Single Bowl Apron Front Sink Model(s) ECTRUF30179R:



(Ex. E, Elkay Specifications.) This graphic from the Elkay Specification for the Crosstown Stainless Steel Single Bowl Apron Front Sink Model(s) ECTRUF30179R is representative of the Infringing Apron-Front Sinks' designs.

47. Figure 1 from the '389 patent illustrates the claimed ornamental design for a sink:

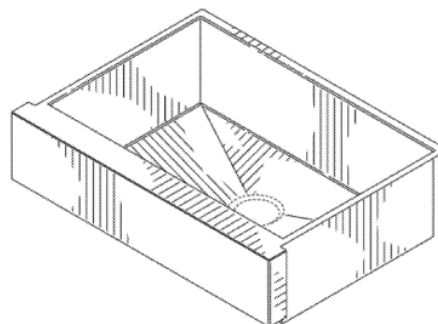


FIG. 1

48. Elkay's Infringing Apron-Front Sinks contain each and every aspect of the

claimed design in the '389 patent.

49. Elkay's Infringing Apron-Front Sinks have an overall appearance that is confusingly similar to the claimed design in the '389 patent.

50. Elkay's Infringing Apron-Front Sinks have an overall appearance that is substantially the same as the claimed design in the '389 patent.

51. Elkay's infringement of the '389 patent has been and continues to be willful.

52. Elkay's conduct has caused and will continue to cause Kohler substantial damage, including irreparable harm, for which Kohler has no adequate remedy at law, unless and until Elkay is enjoined from infringing the '389 patent.

COUNT III

INFRINGEMENT OF U.S. DESIGN PATENT NO. D675,300

53. Kohler repeats and realleges each and every allegation contained in paragraphs 1-41, inclusive, as though fully set forth herein.

54. The '300 patent is valid and enforceable.

55. Kohler is the owner of all right, title, and interest in and to the designs covered by the '300 patent, and Kohler is entitled to receive all damages and the benefits of all other remedies for Elkay's infringement.

56. Without permission or authorization from Kohler, Elkay has manufactured, offered for sale, and sold and continues to manufacture, offer for sale, and sell including, without limitation, the Infringing Apron-Front Sinks which infringe the '300 patent.

57. The following is a graphic from the Elkay Specification for the Crosstown Stainless Steel Single Bowl Apron Front Sink Model(s) ECTRUF30179R:



(Ex. E, Elkay Specifications.) This graphic from the Elkay Specification for the Crosstown Stainless Steel Single Bowl Apron Front Sink Model(s) ECTRUF30179R is representative of the Infringing Apron-Front Sinks' designs.

58. Figure 1 from the '300 patent illustrates one of the claimed ornamental designs for a sink:

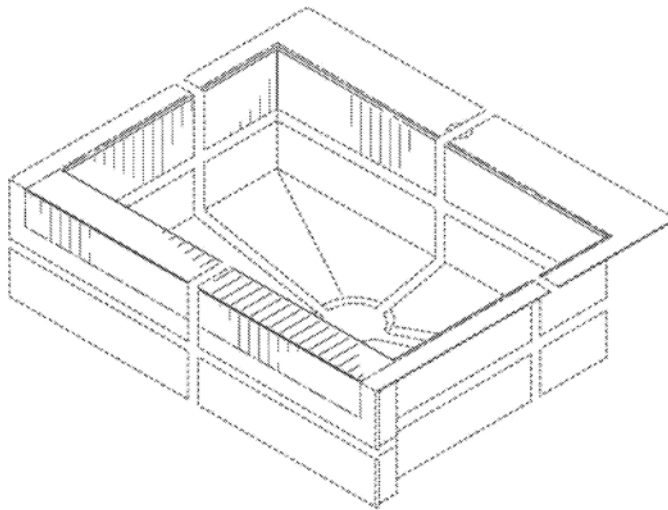


FIG. 1

59. Elkay's Infringing Apron-Front Sinks contain each and every aspect of the claimed designs in the '300 patent.

60. Elkay's Infringing Apron-Front Sinks have an overall appearance that is confusingly similar to the claimed designs in the '300 patent.

61. Elkay's Infringing Apron-Front Sinks have an overall appearance that is substantially the same as the claimed designs in the '300 patent.

62. Elkay's infringement of the '300 patent has been and continues to be willful.

63. Elkay's conduct has caused and will continue to cause Kohler substantial damage, including irreparable harm, for which Kohler has no adequate remedy at law, unless and until Elkay is enjoined from infringing the '300 patent.

COUNT IV

INFRINGEMENT OF U.S. DESIGN PATENT NO. D670,367

64. Kohler repeats and realleges each and every allegation contained in paragraphs 1-41, inclusive, as though fully set forth herein.

65. The '367 patent is valid and enforceable.

66. Kohler is the owner of all right, title, and interest in and to the designs covered by the '367 patent, and Kohler is entitled to receive all damages and the benefits of all other remedies for Elkay's infringement.

67. Without permission or authorization from Kohler, Elkay has manufactured, offered for sale, and sold and continues to manufacture, offer for sale, and sell including, without limitation, the Infringing Apron-Front Sinks which infringe the '367 patent.

68. The following is a graphic from the Elkay Specification for the Crosstown Stainless Steel Single Bowl Apron Front Sink Model(s) ECTRUF30179R:



(Ex. E, Elkay Specifications.) This graphic from the Elkay Specification for the Crosstown Stainless Steel Single Bowl Apron Front Sink Model(s) ECTRUF30179R is representative of the Infringing Apron-Front Sinks' designs.

69. Figure 1 from the '367 patent illustrates one of the claimed ornamental designs for a sink:

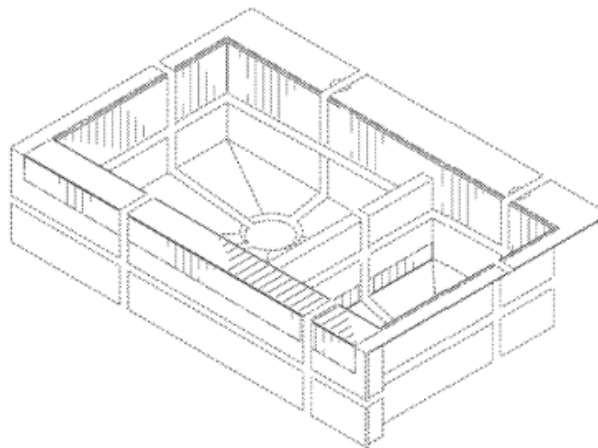


FIG. 1

70. Elkay's Infringing Apron-Front Sinks contain each and every aspect of the claimed designs in the '367 patent.

71. Elkay's Infringing Apron-Front Sinks have an overall appearance that is

confusingly similar to the claimed designs in the '367 patent.

72. Elkay's Infringing Apron-Front Sinks have an overall appearance that is substantially the same as the claimed designs in the '367 patent.

73. Elkay's infringement of the '367 patent has been and continues to be willful.

74. Elkay's conduct has caused and will continue to cause Kohler substantial damage, including irreparable harm, for which Kohler has no adequate remedy at law, unless and until Elkay is enjoined from infringing the '367 patent.

PRAYER FOR RELIEF

Wherefore, Kohler respectfully prays for entry of a judgment and relief as follows:

- A. For a judgment that Elkay has infringed the '487, '389, '300, and '367 patents;
- B. For a preliminary and permanent injunction enjoining Elkay and its agents, officers, directors, employees and all persons in privity or active concert or participation with them, directly or indirectly, from infringing, inducing others to infringe, or contributing to the infringement of the '487, '389, '300, and '367 patents;
- C. For a judgment and award that Elkay account for and pay to Kohler damages adequate to compensate for Elkay's infringement of the '487, '389, '300, and '367 patents, including lost profits but in no event less than a reasonable royalty;
- D. For a judgment and award of Elkay's total profits in an amount subject to proof at trial, pursuant to 35 U.S.C. § 289;
- E. For a judgment and award of any supplemental damages sustained by Kohler for any continuing post-verdict infringement of the '487, '389, '300, and '367 patents until entry of final judgment with an accounting as needed;
- F. For a finding that Elkay's infringement is willful and an award of increased damages for willful infringement pursuant to 35 U.S.C. § 284;

G. For an order finding that this case is exceptional case under 35 U.S.C. § 285 and awarding Kohler its costs, expenses, and disbursements incurred in this action, including reasonable attorneys' fees as available by law to be paid by Elkay;

H. For an award of pre-judgment interest, post-judgment interest, and costs in this action; and

I. For an award of such other relief to Kohler as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Kohler demands a trial by jury on all issues so triable.

Dated: October 27, 2016

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